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Supreme Court, U.S.
FILED
JUL 2 - 2004
OFFICE OF THE CLERK

No. 03-1668

IN THE

Supreme Court of the United States

ROBERT T. MITRIONE AND MARLA A. DEVORE,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

4. Whether the increase in defendants' sentences based on findings never made by a jury violated their Sixth Amendment right to trial by jury under *Blakely v. Washington*, 2004 WL 1402697, ___ S. Ct.___, decided June 24, 2004.

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PETITION FOR A WRIT OF CERTIORARI

Robert T. Mitrione and Marla A. DeVore respectfully petition this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. to Petition 1a-17a) is reported at 357 F.3d 712. The opinion of the district court (App. to Petition 40a-49a), which vacated most but not all convictions, is unreported. The opinion of the district court (App. to Petition 18a-22a), which denied a motion for partial dismissal of the indictment, is reported at 160 F. Supp. 2d 993.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on February 9, 2004. A timely petition for rehearing was subsequently filed on February 23, which was then denied on March 25 (App. to Petition 50a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of the Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ." U.S. CONST., AMEND. VI.

STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 15(8) the Petitioners respectfully supplement their Petition for Certiorari, filed on June 16. This Court issued *Blakely v. Washington*, U.S. LEXIS 4573, ___ S. Ct. ___, on June 24, 2004. This supplement calls attention to this new case that was not available at the time of filing the Petition for Certiorari.

The trial court substantially increased the Petitioners' sentences beyond the statutory maximum as defined in *Blakely*, based on findings never made by a jury. The increase in sentences relied on allegations neither presented in the indictment nor proven to a jury beyond a reasonable doubt. The jury instructions did not include the increased dollar loss cited at sentencing, nor did the instructions address any finding as to vulnerable victim, obstruction of justice or abuse of trust. Rather, the judge increased the sentences by relying on allegations never decided by a jury.

The indictment charged the petitioners with one count of conspiracy to defraud the United States in violation of 18 U.S.C. §371, eight counts of mail fraud in violation of 18

U.S.C. §1341, five counts of filing false claims in violation of 18 U.S.C. §287, and one count of health care fraud in violation of 18 U.S.C. §§1347 and 2. After one of the mail fraud counts was dismissed, a jury, after a three-week trial, convicted Mitrione on all counts except two and DeVore on 10 of the 14 counts against her. After the verdict, the defendants filed a motion for new trial based on newly discovered evidence claiming that a government witness committed perjury during the trial. The trial judge found that perjury indeed occurred and that it tainted all of the counts of conviction except the two counts that involved "incident to" (or substitute) billing.

At sentencing the court found the base sentencing guidelines to be level six for each defendant pursuant to U.S.S.G. §2B1.1(a). This base guideline establishes a range of confinement from zero to six months for both defendants. This base sentence is the statutory maximum permitted based on the jury's verdict. But the court substantially increased this base guideline for both defendants. The increased penalty was based on judicial findings neither submitted to the jury nor found by the jury beyond a reasonable doubt. Pursuant to U.S.S.G. §2B1.1(b)(1)(c) the Court set the loss at $11,934.05 and ordered a four-level enhancement for loss.

The court gave the petitioner Mitrione a two-level enhancement for vulnerable victim pursuant to U.S.S.G. §3A1.1(b)(1) and a two-level enhancement for abuse of trust under U.S.S.G. §3B1.3 and two levels for obstruction pursuant to U.S.S.G. §3C1.1. For petitioner Mitrione this yielded a sentencing range of 21 to 27 months and a sentence of 23 months was imposed. This represents almost a four-fold increase in his sentence. Petitioner DeVore received the same base level of six and the same enhancements except she did not receive an enhancement for abuse of trust. This yielded a guideline range of 15 to 21 months. Devore was sentenced to 15 months. App. to Supplement, *infra*, 1a-11a.

This sentencing violates the holding of *Blakely v. Washington*, 2004 U.S. LEXIS 4573, ___ S.Ct. ___, decided June 24, 2004.

REASON FOR GRANTING THE PETITION

A. The Decision Below Deprived Defendants of Their Sixth Amendment Right to Trial by Jury by Substantially Increasing Their Sentences Based on Findings Never Made by the Jury.

The decision below violated defendants' constitutional right to a jury trial.

The verdict rendered by the jury set a base guidelines sentence of level six. U.S.S.G. §2B1.1(a). The court then made factual findings with a preponderance of the evidence standard to impose several enhancements to the Petitioners' sentences. This Court in *Blakely* held that the statutory maximum sentence under a guidelines system is "the maximum sentence the judge may impose *solely on the basis of the facts reflected in the jury's verdict or admitted by the defendant*." 2004 U.S. LEXIS 4573, *13-*14 (emphasis in original). "In other words, the 'statutory maximum' is not the sentence the judge can impose after finding additional facts, but the maximum he can impose *without* any additional findings." *Id.* *14 (emphasis in original).

Here the base level is six, with a sentencing range of 0-6 months in this case. Sub judice, the sentencing court made several findings in order to impose the greater sentences at issue here. The court had to make factual findings to add the additional four levels for relevant conduct. The court had to make additional findings beyond the jury's verdict to impose the vulnerable victim, abuse of trust, and obstruction of justice enhancements. App. to Supplement, *infra*, 11a-14a. These judge-determined facts increased Mitrione's sentence almost fourfold, and more than doubled Devore's sentence beyond the facts found by the jury alone. This Court in

Blakely has held that such actions violate the Sixth Amendment's right to a jury trial.

Petitioners' direct appeal is pending and thus they are subject to the *Blakely* standard. *Griffith v. Kentucky*, 479 U.S. 314 (1987). "In Justice Harlan's view, and now in ours, failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication." *Id.* at 322. The enhancement of petitioners' sentence here was in violation of the standard promulgated in *Blakely*.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted with this fourth Question Presented.

Respectfully submitted,

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July 2, 2004

APPENDIX

APPENDIX

[164] it is untainted in my judgment by the false testimony of Ms. Statler.

In a civil case obviously much more would be ordered refunded, even if things were taken by mistake. Many, many dollars were taken and received improperly. But for this criminal case, I am limiting the amount of loss for the criminal sanction to $11,255.65.

Next there are objections to the vulnerable victim enhancement. That enhancement was essentially given to the Defendants for placing sexual assault survivors, abuse survivors into the care of Walt Woods, who didn't have the qualifications to handle such a group, and then Medicaid was billed. Defendant Mitrione I believe objected to the enhancement saying the victims don't qualify as vulnerable. Defendant DeVore objections to the enhancement saying she wasn't part of the decision to put Woods in charge of the group.

The Guidelines 3A1.1(b)(1) indicate the enhancement is given if a defendant knew or should have known that a victim of the offense was a vulnerable victim., The 2001 Guidelines application note states, "Vulnerable victim means a person who is a victim of the offense of conviction and any conduct for which the defendant is accountable who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to [165] the criminal conduct."

The November 1, 1998 Guidelines changed 3A1.1(b) from reading, "If the Defendant knew or should have known that a victim of the offense was unusual vulnerable due to age, physical or mental condition, or that a victim was otherwise particularly susceptible to the criminal conduct, increase by two levels"; to—it was changed to read as, "If the Defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by two levels if (A) Subdivision 1

applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under Subdivision 1 by two additional levels."

Before the November 1 of '98 amendment, the application Guideline read, "victim includes any person who is a victim of the offense of conviction and any conduct for which the defendant is accountable under Section 1B1.3 which is relevant conduct." I'm going through this to show that the net effect is that the specific language of the enhancement applying to those who are unusually vulnerable due to age, physical or mental condition, or who were particularly susceptible to the conduct was moved from the Guideline to the application note by the '98 amendment.

In this case the enhancement applies regardless of which Guideline book the Court uses. And in my judgment it [166] applies to both Defendants. The patients of Mitrione and Associates were mental health patients. As a group they were less prepared to challenge and verify the credentials of those providing the services and the bills on their behalf than those not suffering from mental illness. In that sense you could say that they were particularly vulnerable to the Defendants fraud.

I do not rely on that, however. Beyond that, the victims of the sexual assault survivors group were a subclass, if you will, of mental health patients who were particularly vulnerable. Several testified they never would have attended a group if they had known of Woods' limited credentials. Dr. Berryman, who was the defense trial expert, acknowledged that of all mental health patients, those who suffered sexual abuse can be pretty volatile and fragile. He testified that they are complex and can be hurt if the treater is not careful. He testified he would not have a CADC alone treat survivors of sexual abuse, and he wouldn't have a CADC co-facilitate a group of survivors of sexual assault with a psychology intern. That's what was done here.

Therefore, Dr. Mitrione's objection that these individuals aren't vulnerable victims is rejected. And with respect to Ms. DeVore's contention that she had nothing to do with the decision to place Woods as a [167] co-facilitator of the group, I find that the testimony on balance disputes that. Ms. Kuethe testified that both Defendants together told her that Woods would be a co-therapist for the group. When she objected to his lack of qualifications, both Defendants told her Woods was a qualified therapist.

Dr. Mitrione indicated in his testimony that the selection of Woods to participate was made jointly with the staff. Woods testified that he had a conversation with Ms. DeVore, she told him that they didn't see anything wrong with Woods running the group. Each Defendant was aware of the limitations and problems of the group members. Ms. DeVore had been a leader of the group previously. Each was aware of Woods' lack of credentials, each participated in my judgment in the decision to put Woods in charge of the group, therefore the enhancement applies to both Defendants.

The Government's objection to the Pre-Sentence Report that this should be a four level enhancement instead of a two is rejected because in the Court's Opinion the group number here was not sufficiently large to warrant a four level enhancement. So the Court overrules that objection as well.

Next we have the abuse of trust enhancement. The Pre-Sentence Report gives this enhancement to each [168] Defendant. Medical service providers certainly occupy a position of trust with respect to private or public insurers in that they have significant discretion and a lack of supervision in deciding the type and quality of services that are necessary and appropriate for these patients. Medicaid needs to be able to rely on the honesty and integrity of physicians in their medical findings, diagnosis, and treatment. And Medicaid needs to be able to rely on the physician's representations that

the treatments for which Medicaid was billed were in fact performed and performed by the doctor himself in this instance.

Dr. Mitrione was the party authorized by Medicaid to provide psychiatric services in this case. He was the one clearly who abused the trust placed in him by the public insurer. Therefore, I find the enhancement applies to him.

Ms. DeVore was not the Medicaid authorize provider. And since I have given her the vulnerable victim enhancement, I find she should not be given the enhancement for position of trust. I fear with respect to her that there is a danger of double enhancement. I recognize that she was an active, more than active participant in the office. She was much more than an office manager. An argument can be made that she should get this enhancement as well. But I am of the Opinion that it is too close a case in her situation and I do not give her that [169] enhancement. So her objection to this enhancement is sustained.

The next enhancement is for obstruction of justice. And I'm going to address that with respect to Ms. DeVore first. The two aspects of her testimony that in my judgment do qualify for this enhancement are her denial of knowledge of the improper billing practices of the office and her statement that she was not involved in the decision to have Woods participate in the second SOSA group.

I recognize that for this enhancement to apply at all the Court must find that the Defendant testified under oath and gave a false statement concerning a material matter with the willful intent to provide false testimony rather than as a result of confusion, mistake, or faulty memory.

Her testimony that until 1997 she played no role in billing except to fold, mail, and sign bills, and her repeated testimony of "I was not the biller", other than for the period September 22nd of '95 to January of '96, was in my judgment

false testimony. It was contradicted by Shari McGowan, who testified that McGowan's only training in billing came from Marla DeVore showing her how to enter things in the computer.

It was further contradicted by Ms. McGowan testifying that DeVore gave her the EOBs that were rejected. Excuse me, her testimony that she would give the EOBs that were [170] rejected to Marla and Marla would then give a stack of EOBs back to McGowan with a sticky note or piece of paper saying to rebill.

DeVore's testimony was further contradicted by Lynda Fein. Fein said DeVore trained her, showed her how to enter the program, enter the data, and do the billing. She said if she had questions she asked Marla. She said she wasn't aware you couldn't bill Medicaid for two services in one day, and when she asked, Marla told her to bill one provider for a different and Fein did so.

Larry Alexander, who was doing billing during the time of the two counts of conviction, said that Marla DeVore told him to come to her if he had questions or needed help with billing. And she said that forcefully. He testified that Ms. DeVore reviewed the bills he prepared, at least the first few weeks he was there, before they were sent in. He testified, if a claim was rejected and I didn't know why, I would tell Marla and she would tell me what to do. He testified that DeVore told him how to interpret codes, how to fill out insurance forms, how to enter things into the computer.

Her testimony was contradicted by Kuethe who said she asked DeVore in May or June of '96 what to mark on the super bills for the SOSA group sessions, and DeVore just said mark "group."

[171] Witness Woods testified that DeVore told the others how to bill.

On the basis of all of those people's testimony, I find that her statement that until '97 she played no role in billing except to fold, mail, and sign bills, and that she was not the biller other than for the period September 22nd, '95 to January, '96, was false testimony. Further, I find that it was material to the counts of conviction because they were—those statements were willfully intended to mislead the jury into thinking she had no decision making authority in billing when clearly she did. She orchestrated the billing processes throughout that office.

In addition, her statement that she was not involved in the decision to have Woods participate in the second SOSA group was contradicted, as I've mentioned, by both Woods and to some degree by Mitrione. Mitrione said it was a group decision. Woods testified DeVore told him the group seemed to run better with him and they didn't see anything wrong with him running the group. Kuethe said both Defendants told her Woods would be a co-therapist for the group. Both told her he was qualified.

I find the statement that she was not involved in the decision to have Woods participate in the second SOSA group was knowingly false and made with the willful intent to [172] mislead the jury and was material to the issues on Counts 12 and 14. Therefore I overrule her objection to the obstruction of justice enhancement.

As to Defendant Mitrione and the obstruction enhancement, Defendant Mitrione testified that prior to 1999, he had never seen Chapter 200, of the Illinois Department of Public Aid's Medicaid Provider Handbook. He stated that his office received only Chapter 100 in 1993. That is the testimony I rely upon in giving the enhancement.

That testimony was contradicted by Cecilia Mitrione. She testified that in 1991 a representative of Public Aid went through the book, including Chapter 200 with her and Dr. Mitrione and left the book with them.

His testimony was further contradicted By Roni Kaluza, who testified that Mitrione applied to participate as a Medicaid provider on May 12th of 1991, and the Physician's Handbook including Chapter 200 was sent to him or handed to him.

His testimony was contradicted by Nancy Calumet, who testified that Mitrione attended on October 23rd, 1996, a training session for consultants for the Department of Public Aid to do peer review assessments. She said seminar participants were given the Public Aid Handbook and provision about psychiatrist billing was addressed while [173] Mitrione was present as a result of another participant's questions.

His testimony was contradicted by his office's use of billing codes, the W codes found at the end of Chapter 200.

The Court finds that his testimony was knowingly false and made with the willful intent to provide false testimony. That it was material to the issues in Counts 12 and 14 because it was designed to convince the jury that he had no knowledge that he couldn't bill Medicaid for services which those other than he had rendered.

I acknowledge that Dr. Mitrione testified also that he told unnamed staff not to bill Medicare for Woods' sessions. However, the defense was multi pronged. He also testified that he felt Woods was qualified to lead the SOSA group. That he thought he could bill Medicaid for the work of others that was done incident to his and under his personal supervision. And that the same rules for Medicare would apply to Medicaid. And that to him personal supervision included accountability and not presence.

And as to those aspects of the defense, his false testimony that he never saw or received Chapter 200 of the Public Aid Manual was material to at least those aspects. So his objection to the obstruction enhancement is overruled.

Defendant DeVore's objection and request to receive a [174] downward departure because the amount of loss overstates the seriousness of the offense is rejected because the Court has taken into consideration the reasons and need to reduce the amount of loss already.

Her objection to the failure to give her acceptance of responsibility is an amazing objection. I'm not surprised counsel didn't argue it. But since she went to trial and contested virtually everything in the case and everything in the Pre-Sentence Report, she does not deserve acceptance of responsibility credit. It is rejected. That objection is overruled.

Now, I think the remaining issue is which Guidelines should we use. The rule of thumb is the Defendants are sentenced under the Guideline manual in force when sentencing occurs. That's found at Guideline 181.11, 18 U.S.C. 3553A, and cited in U.S. versus Whitlaw, 287 F.3rd 638.

However, if use of the Guidelines in effect on the sentencing date would violate the Ex Post Facto clause of the U.S. Constitution, then we use the Guidelines in effect on the date of the offense or the last date of offense.

The Guidelines and the court cases have held that we have to use the-whole manual. We have to use all of one manual or the other. We don't pick and chose little paragraphs here and little paragraphs there. Basically the [175] Defendants get the benefit of whichever Guideline book assists them or gives them the best benefit.

As I mentioned, we've heard talk about the '97 and '98 Guidelines. Actually, it would be the '96 Guidelines. The '96 Guidelines went into effect November 1 of '96, which would encompass the two counts of conviction which occurred later in November of '96 and one in January of '97. Interestingly enough, the Guidelines were not specifically published in '96. There was a paper pamphlet of amendments which was put

out which does not seem to affect any of the provisions here. We are comparing in essence the '95 Guideline book with the 2001 Guideline book.

Also, the fraud action is encompassed in the 2001 book under Guideline 2B1.1. In the '95 Guideline book and the '96 Guidelines, fraud was encompassed under a Guideline 2F. The '96 Guidelines then which were in effect at the time of the events leading to convictions in Counts 12 and 14 had a two level enhancement for more than minimal planning or if the scheme involved more than one victim. This is found in Guideline 2F1.1(b) (2) of the '95/'96 Guidelines.

In this case, Counts 12 and 14 involved a scheme to defraud more than one victim. And I would note that the application note to this particular Guideline defines [176] victim for this Guideline purpose as the party who paid.

The evidence indicated that patient Tammy Moats was referred by Dr. Mitrione to Woods for individual counseling and SOSA group sessions. She saw Woods five or six times, but not according to her for alcohol and drug problems. She was not told his credentials. She paid cash herself for each session. Therefore, she was a victim of the scheme.

Joan Crossen attended the SOSA group lead by Woods. She was never told what his credentials were but assumed they were the same as Keuthe's. She went to eight to ten sessions and had no alcohol or drug counseling. Her insurance company, American Health Care Providers, paid for six visits to Woods. She paid a co-payment. That insurance company agreement said a CADC was a Bachelor's degreed person, and Woods wasn't. Therefore, Crossen and American Health Care Providers were victims of the scheme to defraud.

Illinois Public Aid Medicaid program was a victim. It paid for the services listed in Counts 12 and 14 to the two victims listed for the sessions performed by Woods.

Marla Ladson was a member of the SOSA group lead by Woods. She testified that she had no substance abuse problems. She was covered by Medicare. Medicare paid for her services—excuse me, her sessions with Woods. Thus [177] Medicare was a victim of the scheme.

As you can see, there are way more victims than one. So the enhancement, the two level enhancement called for under 2F1.1(b)(2) of the '96 Guidelines would be in effect.

If we go through the 2001 Guidelines and compare them to the 1996 with that enhancement, the 2001 Guidelines are clearly beneficial to each Defendant. With the 2001 Guideline we have, since we're talking about amount of loss in excess of 10,000 but less than 30,000, we have a base Offense Level of 6, an enhancement for the amount of loss of 4, a vulnerable victim enhancement of 2, as to Mitrione only an abuse of trust enhancement of 2, as to each Defendant an obstruction enhancement of 2, yielding an Offense Level for Mitrione of 16, an Offense Level for DeVore of 14.

If we use the '96 Guidelines, each would have an Offense Level of 6, an amount of loss, of 3, an enhancement since there was more than one victim of 2, a vulnerable victim enhancement of 2, for Mitrione only an abuse of trust enhancement of 2, for each an obstruction of justice enhancement of 2, yielding for Mitrione an Offense Level 17 and for DeVore an Offense Level of 15.

The 2001 Guidelines favor each Defendant, therefore we will use the 2001 Guidelines for the reasons I have just outlined.

[178] And consequently, having ruled on these objections, should there be one or two paragraphs to which there were no objections lodged, I adopt the findings set forth in those as well. And for the reasons I have outlined I find that Defendant Mitrione under the 2001 Guidelines has an Offense Level, a final Offense Level of 16. Once more it is a

base of 6, an amount of loss of enhancement of 4, a vulnerable victim enhancement of 2, an abuse of trust enhancement of 2, an obstruction of justice enhancement of 2, yielding 16. He's in Category I for Criminal History purposes, putting the Guideline range for Defendant Mitrione at 21 to 27 months.

For Defendant DeVore we have a base Guideline range of 6, an amount of loss enhancement of 4, a vulnerable victim enhancement of 2, an obstruction enhancement of 2, yielding a final Offense Level of 14. She is in Category I for Criminal History, yielding a Guideline range of 15 to 21 months.

Those are my findings as to the application Guideline range. Both are in Zone D.

Let's take fifteen. Fifteen minute break and we will address sentencing.

(Whereupon a break was taken.)

THE COURT: Okay, everybody ready? All right. Turning to issues then of sentencing. Does the Government

* * * *

[2513] establishing the existence of the scheme beyond a reasonable doubt. However, the Government is not required to prove all of them.

A scheme to defraud is a scheme that is intended to deceive and cheat another and to obtain money or property or cause the loss of money or property to another.

A scheme or device includes any plan or course of action intended to deceive others.

The phrase "intent to defraud" means that the acts charged were done knowingly with the intent to deceive or cheat the victim in order to cause a gain of money or .property to Defendants or the potential loss of money or property to another.

A statement or representation is fraudulent if known to be untrue, and made or caused to be made with intent to deceive.

Good faith on the part of a Defendant is inconsistent with intent to defraud, an element of the charges. The burden is not on the Defendant to prove his or her good faith; rather, the Government must prove beyond a reasonable doubt that the Defendant acted with intent to defraud.

Counts 2, 3, 5, 7, 10, 11 and 12, charge that the Defendants committed mail fraud.

To sustain the charge of mail fraud, the Government

* * * *

[2515] The mail fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the Defendants.

The Government must prove that the United States mail was used to carry out the scheme, or was incidental to an essential part of the scheme.

In order to use or cause the use of the United States mails the Defendant need not actually intend that use to take place. You must find that the Defendants knew this use would actually occur, or that the Defendants knew that it would occur in the ordinary course of business, or that the Defendants knew facts from which that use could reasonably have been foreseen.

The Defendants need not actually or personally use the mail.

Although an item mailed need not itself contain a fraudulent representation or promise or a request for money, it must further or attempt to further the scheme.

Each separate use of the mail in furtherance of the scheme to defraud constitutes a separate offense.

The Government may satisfy its burden of proof that documents were mailed by means of circumstantial evidence, so it is therefore not determinative that the. Government failed to produce the envelopes in which the documents were mailed.

* * * *

[2518] To sustain the charge of making a false, fictitious, or fraudulent claim, the Government must prove the following propositions as to each Defendant and as to each count.

First, that a Defendant knowingly presented a claim against the United States or a department or agency of the United States.

Second, that the claim was materially false, fictitious, or fraudulent.

Third, that a Defendant knew the claim was false, fictitious, or fraudulent.

And fourth, that a Defendant acted with the intent to defraud.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt regarding a Defendant as to a particular count, then you should find that Defendant guilty of that particular count.

If, on the other hand, you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt regarding a Defendant as to a particular count, then you should find that Defendant not guilty of that particular count.

A false statement is "material" if it has a natural

* * * *

[2520] Defendant Marla DeVore acted knowingly and intentionally and with the intent to defraud in submitting bills for Medicaid reimbursement, or whether she acted under mistaken belief.

As with any other evidence, it is for you to decide whether the testimony is truthful and accurate in part, in whole, or not at all, as well as what weight, if any, you give to the testimony.

The term "health care benefit program" includes insurance companies, the Medicare program of the United States, and the Medicaid program of the United States and the State of Illinois.

Count 14 of the indictment charges the Defendants with a crime of health care fraud.

To sustain the charge of health care fraud, the Government must prove the following propositions:

First, that the Defendants executed or attempted to execute a scheme and artifice to defraud a health care benefit program.

Second, that the Defendants did so in connection with the delivery of or payment for health care benefits, items, and services.

And third, that the Defendants did so knowingly and intentionally.

If you find from your consideration of all the

* * * *